

**C13-1997**FILED  
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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

NOV 04 2013

United States District Court		District <b>WASHINGTON, WESTERN</b> <small>AT SEATTLE CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON DEPUTY</small>	
Name (under which you were convicted): <b>HENRY C ROSENAU</b>		Docket or Case No.: <b>2:06CR00157MJP-001</b>	
Place of Confinement: <b>NORTHEAST OHIO CORRECTIONAL CENTER</b>		Prisoner No.: <b>41168-086</b>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <b>v. HENRY C. ROSENAU</b>	

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
**UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE**  
**HONORABLE JUDGE MARSHA J. PECHMAN**

(b) Criminal docket or case number (if you know): **2:06CR00157MJP-001**

2. (a) Date of the judgment of conviction (if you know):

(b) Date of sentencing: **NOVEMBER 7, 2012**

3. Length of sentence: **120 MONTHS IMPRISONMENT, 4 YEARS SUPERVISED RELEASE**

4. Nature of crime (all counts):

**VIOLATION OF 21 U.S.C. §§ 952, 960 (a)(1) and (b)(2), 963**  
**CONSPIRACY TO IMPORT MARIJUANA**

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

**PLEADED GUILTY TO COUNT ONE OF SUPERCEDING INDICTMENT**

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

**RESULTED IN MISTRIAL, PLEADED GUILTY PRIOR TO RE-TRIAL**



13-CV-01997-PET

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court:
  - (b) Docket or case number (if you know):
  - (c) Result:
  - (d) Date of result (if you know):
  - (e) Citation to the case (if you know):
  - (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I believe that I was the victim of ineffective assistance of counsel in that counsel recommended that I enter into a plea agreement without my knowing exactly what I was pleading guilty to, as well as the rights which I was forfeiting, and also with misrepresentations which were never going to be followed through on. I pleaded guilty to Count One of the superceding indictment, believing that I was only going to face punishment for 945 Kilograms, according to the statements in the plea agreement. I was led to believe that I would face a minimum sentence of Five Years, and that I wouldn't face enhance penalties. I was led to believe that certain provisions in the plea agreement were merely formalities, and the contradictory statements in the plea agreement were disregarded. I was also led to believe that I would serve my sentence in Canada, that the United States would not contest my transfer, and several other promises which were implied in the plea agreement which never came to fruition. I also waived my right to appeal and to collaterally attack my sentence when it was absolutely not in my best interest, and also dropped a lawsuit I had due to the promises made in the plea agreement.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

I did not appeal my conviction. Ineffective assistance is usually brought up on §2255 motion.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

## **GROUND TWO: Violation of Due Process Rights, Rule Of Specialty, Extradition**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**Since I was in the custody of the United States under the protection of the United States-Canada extradition treaty, I should have been properly protected against violations to the treaty, including being convicted and sentenced only for specific offense which was raised in extradition proceedings. The government violated the extradition agreement when it allowed me to plead guilty to a reduced charge, and then tried to use non-indictment relevant conduct to enhance my sentence and mandatory minimum. This circumvented the extradition agreement and was in violation of the rule of specialty and rules of international comity.**

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

**Did not file appeal. Indirectly related to ineffective assistance of counsel claim.**

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE: VIOLATION EQUAL PROTECTION AND DUE PROCESS  
ALLEYNE VIOLATIONS REGARDING MANDATORY MINIMUM ENHANCEMENT**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**The specific offense characteristics which I pleaded guilty to, and therefore which were able to be used for determining my mandatory minimum sentence was enumerated in my plea agreement, namely of a conspiracy involving no less than 100 Kilograms, and specifically citing 945 Kilograms as the guilty plea weight. Relevant conduct was improperly used to enhance mandatory minimum sentence. This violation resulted in the Judge being unable to reduce sentence further based on downward variance requests.**

**Should the Judge not have been restricted by the mandatory minimum 10 year sentence which was triggered by the relevant conduct enhancement, the sentence could have been mitigated further and a reduced sentence, closer to the 5 year sentence requested could have been attained.**

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

**No direct appeal filed.**

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

#### **GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

**Ineffective assistance is properly brought forth on §2255 motion. The Alleyne violation is a new ruling parallel to prior Apprendi ruling. Rule of Specialty was brought up in Sentencing Memorandum but not elaborated.**

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

**The motion is timely filed as my sentencing date was November 7, 2012, and the date the conviction became final was November 21, 2012. As such, this motion has been filed ahead of deadline.**

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: **A reduced sentence at or near mandatory minimum of 5 years, and/or compelling a transfer to Canada, or Vacation Of Sentence with Guidance to correct areas in violation specifically mentioned in forthcoming Brief In Support Of Motion.**

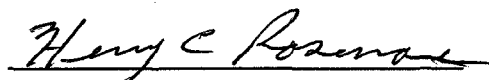
or any other relief to which movant may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on  
(month, date, year).

Executed (signed) on 10/30/2013 (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.



U.S. Department of Justice

Criminal Division  
Office of Enforcement Operations  
International Prisoner Transfer Unit

Washington, D.C. 20530

JUN 26 2013

Chris Hill, Director  
Institutional Reintegration Operations  
Correctional Service of Canada  
340 Laurier Avenue West  
Ottawa, Ontario K1A 0P9  
Canada

Re: Henry Carl Rosenau, Reg. No. 41168-086  
aka: Henry C Rosenau  
Denial of Request to Transfer to Canada

Dear Mr. Hill:

After considering all of the appropriate factors in this transfer application, the United States has denied the request to transfer to Canada. The prisoner is currently incarcerated at the Northeast Ohio Correctional Center, Youngstown, Ohio. The United States denied the transfer application because of serious law enforcement concerns.

There is no administrative appeal from this decision. The prisoner may reapply two years from the date of this letter, at which time, the United States will review the information already available, as well as any new information that the prisoner provides. If the prisoner believes that the circumstances relating to the denial of the transfer application have changed significantly, the prisoner may write to the Department of Justice to seek a reconsideration of the transfer decision earlier than two years from the date of this letter. Unless the prisoner is able to show that the reasons supporting the denial of his transfer application have changed substantially, it is unlikely that the United States will change its decision.

Sincerely,

Paula A. Wolff, Chief  
International Prisoner Transfer Unit

cc: Hélène Bouchard, Embassy of Canada, Washington, D.C.  
Michael Harris, Federal Bureau of Prisons, Washington, D.C.  
✓ Henry C Rosenau



U.S. Department of Justice

Criminal Division  
Office of Enforcement Operations  
International Prisoner Transfer Unit

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Washington, D.C. 20530

SEP 09 2013

Henry Carl Rosenau  
Reg No. 41168-086  
Northeast Ohio Correctional Center  
2240 Hubbard Road  
Youngtown, Ohio 44505

Dear Mr. Rosenau:

This is in response to your two letters dated July 15, 2013, regarding your application for a prisoner transfer to Canada. With respect to your concern that we had not received letters in support of your transfer application, please be advised that we have now received twelve letters in support of your transfer from friends, family, and co-workers.

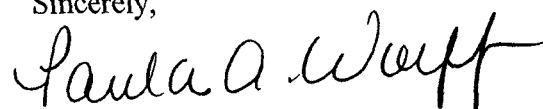
In one of your letters you asked this office to reconsider its decision denying your request for a prisoner transfer based on the terms of the plea agreement you signed. We recognize that paragraph 9 of your plea agreement provides that "[t]he United States agrees to take no position with regard to any request by Defendant for a treaty transfer made pursuant to a valid treaty with Canada." However, it should be noted that paragraph 15 of the same agreement specifically states that the agreement "binds only the United States Attorney's Office for the Western District of Washington," and that it "does not bind any other . . . office or agency of the United States." Thus, the only commitment made was that the United States Attorney's Office for the Western District of Washington would refrain from taking a position regarding your transfer request. That office did not take a position, and it therefore abided by the terms of the plea agreement..

The authority to make transfer determinations has been vested by federal law in the Attorney General or his designee. See 18 U.S.C. § 4102. That authority has been delegated by the Attorney General to the Director and Associate Directors of the Office of Enforcement Operations in the Criminal Division of the U.S. Department of Justice. No other government official has the power to make the transfer decision or to promise that transfer will occur.

Although you indicate that you were led to believe that "the United States" would not object to your request for a transfer, and that this was one of the reasons you proceeded with the plea agreement, the U.S. Attorney's Office has advised this office that there was no misunderstanding at the time that paragraph 9 only bound the U.S. Attorney's Office for the Western District of Washington, and that you and your attorney were told that the position of

that office would not be determinative of the final decision of the Office of Enforcement Operations. As a result, our decision in your case did not conflict with the terms of your plea agreement.

Sincerely,

A handwritten signature in black ink, reading "Paula A. Wolff". The signature is written in a cursive style with a large, stylized "P" and "W".

Paula A. Wolff, Chief  
International Prisoner Transfer Unit